

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) No. 4:09-CR-469 CAS
)
 DIONDREY HARDWICK,)
)
 Defendant.)

This matter is before the Court on defendant Diondreya Hardwick's letter to the Clerk of the Court, which the Court construes as a motion for an extension of time to file a motion under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence or, in the alternative, for appointment of counsel to represent him in preparing a § 2255 motion. Defendant's motion will be denied in all respects.

For a district court to have jurisdiction over a motion to extend the time to file a § 2255 motion, the motion “must be either be filed concurrently with or after a § 2255 petition, or be construed as the § 2255 petition itself.” Ramirez v. United States, 461 F.Supp.2d 439, 441 (E.D. Va. 2006). The Court is permitted to construe a motion for extension of time as a § 2255 motion when it “contains allegations sufficient to support a claim under section 2255.” Id.

In this case, defendant's motion for extension of time does not contain sufficient allegations for the Court to construe it as a § 2255 motion. As a result, the motion will be denied.

Motion for Appointment of Counsel

Defendant moves in the alternative for appointment of counsel to represent him in preparing a § 2255 motion to vacate, set aside or correct his sentence. Defendant's motion for appointment of counsel is governed by 18 U.S.C. § 3006A, which permits district courts to appoint counsel for indigent inmates "seeking relief under section 2241, 2254, or 2255 of title 28." 18 U.S.C. § 3006A(a)(2)(B). Defendant cannot be deemed to be "seeking relief" under § 2255 because he has not yet filed a motion to vacate under § 2255. Cf. McFarland v. Scott, 512 U.S. 849, 864-66 (1994) (Thomas, J., dissenting) (habeas corpus proceedings under 28 U.S.C. § 2254 are commenced by the filing of a completed petition for writ of habeas corpus).

There is an exception to the general rule that a habeas corpus proceeding is initiated only by the filing of a completed petition for writ of habeas corpus, but the exception only applies to death penalty postconviction proceedings. McFarland, 512 U.S. at 856-57. The exception does not apply to discretionary appointments under § 3006A such as the one sought by defendant. As a result, the Court does not have the authority to appoint counsel at this time.


The Court will direct the Clerk of the Court to send defendant a form motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255.

Accordingly,

IT IS HEREBY ORDERED that defendant's motion for an extension of time to file a motion to vacate under 28 U.S.C. § 2255 is **DENIED**. [Doc. 61]

IT IS FURTHER ORDERED that defendant's alternative motion for appointment of counsel to represent him in preparing a motion under 28 U.S.C. § 2255 is **DENIED**. [Doc. 61]

IT IS FURTHER ORDERED that the Clerk of the Court shall send defendant a form motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255.



CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

Dated this 16th day of December, 2011.